

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DERRICK EQULLA THURMOND,

Plaintiff,

Case No. 18-cv-1047-pp

v.

DUSTIN CHURCH, AARON ARMSTRONG,
TRAVIS GERVAS, DON SCHOFIELD,
ROBERT BALAKA and FOREST
COUNTY POTAWATOMI COMMUNITY,

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS (DKT. NO. 37)
AND DISMISSING CASE WITHOUT PREJUDICE FOR FAILURE TO
DILIGENTLY PURSUE**

The plaintiff is representing himself. On July 10, 2018, he filed a complaint, alleging that the defendants had done various things to him. Dkt. No. 1. Magistrate Judge Joseph allowed him to proceed without prepaying the filing fee, dkt. no. 4, and on August 30, 2018, the plaintiff filed a proposed amended complaint, dkt. no. 12. The defendants filed a motion to dismiss the complaint, arguing that it didn't state a claim for which a federal court could grant relief. Dkt. Nos. 25, 26. On January 30, 2020, the court agreed with the defendants and granted their motion to dismiss, but it gave the plaintiff the opportunity to amend his complaint. Dkt. No. 33. The plaintiff filed an amended complaint by the deadline the court had set. Dkt. No. 34.

On March 11, 2020, the defendants filed a motion to dismiss the plaintiff's second amended complaint, again arguing that he hadn't stated a

claim for which a federal court could grant relief. Dkt. No. 37. Under Rule 7(b) of this court's Civil Local Rules, the plaintiff had twenty-one days—until April 1, 2020 or so—to oppose that motion, if he chose to do so. The court did not receive anything from the plaintiff by April 1, 2020. On April 6, 2020, the court issued an order, giving the plaintiff another chance to oppose the defendants' motion to dismiss. Dkt. No. 40. The court told the plaintiff that if he did not file his opposition in time for the court to receive it by the end of the day on May 1, 2020, the court would grant the defendants' motion and dismiss the case on the next business day. *Id.* at 2.

The court did not receive anything from the plaintiff by the end of the day on May 1, 2020. The court has not heard from the plaintiff since he filed his amended complaint on March 3, 2020, over two months ago. None of the documents the court has mailed to the plaintiff have been returned as undeliverable, and the plaintiff has not advised the court of a change in address. The court concludes that the plaintiff no longer wishes to pursue the lawsuit.

The defendants asked the court to dismiss the case with prejudice, which would mean that the plaintiff could not bring a new lawsuit about the same issues in the future. Given the COVID-19 health crisis, which has prohibited people from leaving their homes, slowed postal deliveries and caused many other disruptions, the court will not dismiss with prejudice, as allowed under Civil L.R. 41(c).

The court **GRANTS** the defendants' motion to dismiss. Dkt. No. 37.

The court **ORDERS** that this case is **DISMISSED without prejudice** for the plaintiff's failure to diligently pursue it. The court will enter judgment accordingly.

Dated in Milwaukee, Wisconsin this 11th day of May, 2020.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge